



U.S. Immigration
and Customs
Enforcement

December 10, 2018

Shawn Musgrave
Muckrock
411A Highland Ave
Somerville, MA 02144-2516

RE: 2019-ICAP-00082, 2018-ICFO-53106

Dear Mr. Musgrave:

This is in response to your letter dated October 29, 2018, received on November 8, 2018, appealing the U.S. Immigration and Customs Enforcement (ICE) Freedom of Information Act (FOIA) Office's response to your July 16, 2018, FOIA request. Your request sought records relating to Operation Longarm.

On October 1, 2018, the ICE FOIA Office responded to your request. Specifically, the ICE FOIA Office advised you that:

You have requested records concerning a third party. Records pertaining to a third party generally cannot be released absent express authorization and consent of the third party, proof that the subject of your request is deceased, or a clear demonstration that the public interest in disclosure outweighs the personal privacy interest and that significant public benefit would result from the disclosure of the requested records. Since you have not furnished a release, death certificate, or public justification for release, release of the requested records concerning a third party would result in an unwarranted invasion of personal privacy in violation of the Privacy Act, 5 U.S.C. § 552a. In addition, third-party records are also generally exempt from disclosure pursuant to sections (b)(6) and (b)(7)(C) of the Freedom of Information Act, 5 U.S.C. § 552.

Should you obtain the written authorization and consent from the third party referenced in your request for release of the records, please submit a new request for the documents accompanied by the written authorization and consent. A form is enclosed to assist you in providing us with the required authorization and consent. The authorization must be notarized or signed under penalty of perjury pursuant to 18 U.S.C. § 1001. Please send any such new request with the requisite authorization and consent to: ICE Freedom of Information Office, 500 12th Street, S.W., Stop 5009 Washington, D.C. 20536-5009.

In your letter dated October 29, 2018, you stated that you "appeal the constructive denial of this request" and asked that this request be remanded.

In regards to your refusal to provide signed authorization for third-party information, the Department of Homeland Security (DHS) explains in its Final Rule on FOIA Regulations, that it applies a balancing test to determine whether the personal privacy interests of a third party outweigh the public interest in disclosure of records containing third-party information. The commentary on the Rule further explains that the lack of signed authorization may result in a denial of access to third-party requesters. 81 FR 83628 (Nov. 22, 2016). Here, a search conducted to locate responsive records produced information relating to a third-party who possess a substantial privacy interest in the records you requested. As was explained to you in the ICE FOIA Office's response, this information is generally protected under Exemptions (b)(6) and (b)(7)(C) of the FOIA. Therefore, ICE affirms the determination of the ICE FOIA Office to decline to produce to you these records absent signed authorization for the third-party information.

Notwithstanding the above, with respect to the search conducted by ICE FOIA, upon a complete review of administrative record with respect to this request, ICE has determined that new search(es) or, modifications to the existing search(es), could be made. We are therefore remanding your appeal to the ICE FOIA Office for processing and re-tasking to the appropriate agency/office(s) to obtain any responsive documents. The ICE FOIA Office will respond directly to you.

Should you have any questions regarding this appeal remand, please contact ICE at ice-foia@dhs.gov. In the subject line of the email please include the word "appeal," your appeal number, which is **2019-ICAP-00082**, and the FOIA case number, which is **2018-ICFO-53106**.

Sincerely,



for
Erin J. Clifford
Chief
Government Information Law Division
ICE Office of the Principal Legal Advisor
U.S. Department of Homeland Security